

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TROY X. KELLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. C21-5476 RSM

ORDER DENYING PETITIONER'S  
MOTION TO APPOINT COUNSEL

This matter comes before the Court on Petitioner's Motion to Appoint Counsel. Dkt. #2. Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence on July 1, 2021. Dkt. #1. The motion has been served on the Government and the Court currently awaits a response. Dkt. #7. In his motion for appointed counsel, Petitioner argues that his financial situation, the volume and complexity of the case, and his limitations to legal resources while in federal custody merit appointment of counsel. Dkt. #2. He also seeks counsel from outside the district due to the "personal nature" of his claims. *Id.* The Government has filed a response opposing appointment of counsel at this time. Dkt. #4.

In a case brought under 28 U.S.C. § 2255, a district court may appoint counsel in the "interest of justice". 18 U.S.C. § 3006A(a)(2)(B); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). "In deciding whether to appoint counsel in a habeas proceeding, the district court must

1 evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate  
2 his claims pro se in light of the complexity of the legal issues involved.” *Weygandt*, 718 F.2d at  
3 954. The Court does not find that justice requires the appointment of counsel at this time.

4 First, the issues presented in Mr. Kelley’s motion do not appear particularly complex.  
5 See Dkt. #1. Mr. Kelley’s motion to vacate also demonstrates that he is able to effectively  
6 articulate his claims. *Id.* Furthermore, at this early stage of the litigation, there is no record  
7 before the Court that would allow it to adequately examine whether Mr. Kelley’s claims have  
8 merit. Accordingly, the Court hereby finds and ORDERS that Petitioner’s Motion to Appoint  
9 Counsel, Dkt. #2, is DENIED without prejudice. This Order does not preclude Petitioner from  
10 re-filing his motion once a factual record pertaining to his claims has been more fully developed.

11  
12 DATED this 30<sup>th</sup> day of July, 2021.

13  
14 

15 RICARDO S. MARTINEZ  
16 CHIEF UNITED STATES DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24